IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 2358/2002

PETITIONER : Vijay Singh S/o Ram Singh,
Aged about 31 years,
R/o ShitlaPara Ramgarh,
Gudiyari,Distt. Raipur (CG).

VERSUS

RESPONDENTS :
1) State of Chhattisgarh,
Through the Secretary,
Home Department,DKS Bhawan,
Raipur (Chhattisgarh).

2) The Director General of Police,
State of Chhattisgarh,
Police Head Quarter,
Near DKS Bhawan,Raipur (CG).

3) Inspector General of Police,
Raipur, District:Raipur (CG).

4) Superintendent of Police,
Durg, District: Durg (CG).

P.R. No. 2380/02
Presented by Shri A.K. Tiwari
dated 9.8.02

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

18.7.06

HIGH COURT OF CHHATTISGARH AT BILASPUR

981

WRIT PETITION NO. 2358 OF 2002.

PETITIONER: : Vijay Singh

-Versus-

RESPONDENTS: : State of Chhattisgarh & others.

Post for order on 18th July, 2006.

Sd/-
Satish K. Agnihotri
Judge

99

HIGH COURT OF JUDICATURE CHHATTISGARH : AT BILASPUR

SINGLE BENCH : HON'BLE SHRI SATISH K. AGNIHOTRI, J.

WRIT PETITION NO. 2358 OF 2002.

PETITIONER: : Vijay Singh

Vs.

RESPONDENTS: : State of Chhattisgarh & others.

Present: Shri P.R. Patankar, counsel for the petitioner.

Smt. Anju Ahuja, Dy. Govt. Advocate, for the respondents/ State.

ORDER
(Passed on 18th July, 2006)

The present writ petition filed under Articles 226/227 of the Constitution of India impugns the order dated 26/11/1998 (Annexure-A/6), passed by the Superintendent of Police, Durg whereby the petitioner along with one Mr. Naresh Rao were removed from service. The order dated 24/04/2002 (Annexure-A/10) passed by respondent No.1 was also impugned whereby the State Government dismissed the mercy application filed by the petitioner.

(2) The brief facts, in nut shell, are that the petitioner was working as Constable and was posted at Bhilai when he was removed by order dated 28/06/1991 (Annexure-A/1). The petitioner's removal was set aside by the Inspector General of Police vide order dated 08/05/1992 (Annexure-A/2) and he was reinstated in service. Thereafter, the petitioner along with one

100

Naresh Rao was suspended on 04/12/1997 (Annexure-A/3) on the ground of registration of a criminal case against them in Police Station, Bhilai Nagar. The petitioner along with Naresh Rao was served with a charge-sheet and two charges were framed against the petitioner, which reads thus :

"(1.) आरोपी आरक्षक नरेश राव कमांक 166 (निलं.) के विरूद्व :–

1. बिना किसी डिवटी के अनाधिकृत रूप से थाना भिलाई नगर के क्षेत्रान्तर्गत जाकर अपने पद का दुरूपयोग करते हुए विभागीय नियमों के विरूद्व कार्य कर नैतिक अधः पतन एवं संदिग्ध आचरण का परिचय देना ।

2. दिनांक 4.12.97 की रात्रि डिवटी के दौरान शराब का सेवन कर म.प्र. सिविल सेवा आचरण नियम 23–बी में निहित प्रावधानों का उल्लंघन करना ।

3. पुलिस आचरण के सिद्वांत के विरूद्व कार्य करने हेतु पूर्व में दंडित किये जाने के बावजूद भी अपने आचरण में सुधार न लाकर अपने आपको विभाग के अयोग्य सिद्व करना ।

(2.) आरोपी आरक्षक विजय कुमार सिंह कमांक 840 के विरूद्व :–

1. बिना किसी डिवटी के अनाधिकृत रूप से थाना भिलाई नगर क्षेत्रान्तर्गत जाकर अपने पद का दुरूपयोग करते हुए विभागीय नियमों के विरूद्व कार्य कर नैतिक अधःपतन एवं संदिग्ध आचरण का परिचय देना ।

2. वर्ष 1991 में विभाग की छबि धूमिल करने के आरोप पर सेवा से पृथक किये जाने के बावजूद भी अपने आचरण में कोई सुधार न लाकर पुनः पुलिस विभाग के अयोग्य सिद्व करना ।"

(3) According to Shri P.R. Patankar, learned counsel appearing for the petitioner, the petitioner was afforded adequate and sufficient opportunity of hearing and there is no irregularity in conducting the enquiry. The Disciplinary Authority, Superintendent of Police, Durg agreeing with the

(101)

enquiry report submitted by one Shri R.P. Sharma, City Superintendent of Police, removed the petitioner and said Naresh Rao from service on being found all the charges framed against the petitioner and Naresh Rao proved. The petitioner preferred an appeal before the Dy. Inspector General of Police, Raipur against the order of removal dated 26/11/1998 (Annexure-A/6) passed by the Superintendent of Police, Durg. The Appellate Authority by order dated 08/02/1999 (Annexure-A/8) dismissed the appeal of the petitioner. According to the learned counsel, the appeal of said Naresh Rao was also dismissed.

(4) In the meantime, the petitioner and Naresh Rao were acquitted in the criminal trial of the offences under Section 506-B and 394/34 of the Indian Penal Code giving benefit of doubt to the petitioner and Naresh Rao.

(5) The petitioner and Naresh Rao being aggrieved by the order dated 08/02/1999 (Annexure-A/8) passed by the Appellate Authority, filed mercy applications before the State Government and the State Government having considered the case of the petitioner and that of Naresh Rao, rejected the application of the petitioner and accepted the application of Naresh Rao.

(6) Learned counsel appearing for the petitioner submits that the petitioner and Naresh Rao were charged for the same offence. Both the persons were removed from service on the basis of the departmental enquiry by the Disciplinary Authority. Learned counsel further submits that the appeal filed by the petitioner and Naresh Rao was also dismissed. Thereafter, the Director General of Police allowed the mercy application of Naresh Rao converting his punishment of removal from service to

withholding of one increment for one year without back-wages and the mercy application of the petitioner was rejected. Learned counsel further submits that this is a clear case of discrimination. He submits that when both the persons were charged for the same offence they should have been treated by the Director General of Police similarly.

(7) Smt. Anju Ahuja, learned Dy. Govt. Advocate, *per contra,* submits that the charges against the petitioner were different from that of Mr.Naresh Rao. Learned counsel submits that Mr. Naresh Rao was found in drunken condition in the night duty and the petitioner was removed from service earlier in the year 1991 and thereafter reinstated in service to improve his conduct, but, the petitioner repeated his conduct by not showing any improvement in his behaviour and conduct.

(8) Having heard learned counsel for the parties and having perused the records appended to the writ petition and return, it is found that the charges against the petitioner were different from that of said Naresh Rao. Naresh Rao was found in drunken condition, as such he was given opportunity to improve his conduct and his punishment of removal from service was converted into withholding of one increment for one year and he was reinstated in service without back-wages. So far as petitioner is concerned, he was removed from service earlier in the year 1991 for having committed serious misconduct and he was reinstated in service by the Inspector General of Police with a warning to improve his conduct. The petitioner failed to improve his conduct and committed a very serious offence of outraging modesty of a lady. Though the petitioner was acquitted of the said offence in criminal trial by giving him benefit of doubt,

(103)

he cannot take advantage of acquittal in the departmental proceedings as he was not acquitted honourably, but by giving benefit of doubt.

(9) This is not the case of the petitioner that there was any irregularity or illegality in the process of conduct of enquiry. The entire grievance of the petitioner is that he was treated discriminately by the State Authorities while considering his mercy application. It is well recognized principle of law that this Court in exercise of its power under Articles 226/227 of the Constitution has jurisdiction to interfere with the process of decision-making if the same is illegal and perverse, but, not in the decision which has been reached by the Enquiry Officer after following the due process of law by providing sufficient opportunity of hearing, on the basis of sufficient evidence on record. This is not a case where the grievance of the petitioner is based on perversity or illegality in conduct of enquiry. It is neither pleaded nor established that there was no evidence to hold the petitioner guilty of the charges. Thus, this is not a case for interference with the enquiry report, order passed by the Disciplinary Authority and the Appellate Authority, by this Court.

(10) For the reasons stated above, this writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge